

NOT FOR PUBLICATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Shawn Lee Thompson,
Petitioner,

v.

Ryan Thornell, et al.,
Respondents.

No. CV-23-08577-PCT-SRB

ORDER

Petitioner, Shawn Lee Thompson was convicted in Arizona state court of one count of Luring a Minor for Sexual Exploitation and two counts of Aggravated Luring a Minor for Sexual Exploitation. After serving a 3.5-year prison sentence for Luring a Minor for Sexual Exploitation, he began serving consecutive lifetime probations on the other two counts. After a probation search of his residence in October 2017, a Petition to Revoke Probation was filed alleging several violations of Petitioner's sex offender conditions. On January 2, 2018, Petitioner admitted to one of the alleged violations admitting that he had viewed pornographic materials on the internet. In two written statements he admitted he had been "viewing and flirting with females on the PlayStation Network" and "between July and October 2017, [he] accessed the PS4 web browser and watched pornographic materials of teen adult and animated females." Petitioner was sentenced on his admitted probation violation on January 22, 2018. (Doc. 10-2, Ex. S.)

Following his probation violation conviction, Petitioner filed a Petition for Post-Conviction Relief in state court on April 14, 2018 claiming ineffective assistance of

1 counsel. This Petition was dismissed on September 11, 2019. There was no appeal of the
2 dismissal. (Doc. 10-1, Exs. J, L.)

3 On April 1, 2021, Petitioner filed another Petition for Post-Conviction Relief which
4 was dismissed as untimely on May 12, 2021. On June 7, 2021 he filed a document which
5 the Court treated as a Motion for Reconsideration of the May dismissal Order. The Motion
6 for Reconsideration was denied on June 17, 2021. (Doc. 10-1, Exs. R, S, T, U.)

7 On July 14, 2021, Petitioner filed a Motion for Correction of Sentence which was
8 treated by the state court as another Petition for Post-Conviction Relief. The Court
9 dismissed this petition as untimely on July 27, 2021. Petitioner then sought review in the
10 Arizona Court of Appeals. Review was denied on December 23, 2021. The Arizona
11 Supreme Court denied review on October 7, 2022. (Doc. 10-2, Exs. U, W; Doc. 10-6, Exs.
12 AA, BB.)

13 On October 11, 2023, Petitioner filed his Petition for Writ of Habeas Corpus in this
14 Court asserting that his conviction for his probation violation violated his federal
15 constitutional rights to due process because there had been an unreasonable search and
16 seizure and because there was ineffective assistance of counsel. (Doc. 1.) Respondents filed
17 a Limited Answer arguing that Petitioner raised non- cognizable claims, that the claims
18 were procedurally defaulted, and that the Petition was untimely. (Doc. 10.) Petitioner filed
19 a Limited Reply. (Doc. 11.)

20 On October 2, 2024, the Magistrate Judge issued her Report and Recommendation
21 recommending the denial and dismissal with prejudice of the Petition because it was
22 untimely filed and because neither equitable tolling nor actual innocence excused the
23 untimely filing. (Doc. 12.) Petitioner filed Objections on November 15, 2024. (Doc. 15.)
24 Respondents responded to the Objections on November 26, 2024. (Doc. 16.) Petitioner
25 does not object to the Magistrate Judge's finding that the Petition was untimely. Rather he
26 objects to the findings that he was not entitled to equitable tolling and that he could not
27 pass the actual innocence gateway to excuse his untimely petition.

28 . . .

Equitable Tolling

Petitioner's arguments for equitable tolling relate to his alleged inability to timely raise his post-conviction claims in state court because Mojave County had possession of his property that contained evidence showing he did not violate his probation. Petitioner admits he took possession of this property from Mojave County on September 9, 2020, about one-year after the dismissal of his timely filed Petition for Post-Conviction Relief. He then filed his next Petition for Post-Conviction Relief on April 1, 2021. This Petition was dismissed as untimely. He filed yet another Petition for Post-Conviction Relief, titled Motion for Correction of Sentence, which was denied as untimely on July 27, 2021. Both the Arizona Court of Appeals and the Arizona Supreme Court denied review. Petitioner argues that this Court should ignore the state court's dismissal of his two Petitions as untimely and instead find that there should be equitable tolling because he diligently pursued his claims after he retook possession of his seized property.

Petitioner's argument for equitable tolling made in his Limited Reply and in his Objections is that, until he obtained his seized property, he could not know that no criminal or sexual activity occurred and that he had committed no probation violation. Petitioner fails to address the Magistrate Judge's finding that he has failed to show how the fact that he could not inspect his seized property caused the untimely filing of his habeas petition. He also fails to address his own personal knowledge of his internet usage and his admission under oath that he did view pornography in violation of his probation terms. Most importantly, Petitioner fails to address the more than three-year delay between his admitted receipt of his seized property in September 2020 and the filing of his habeas petition in October of 2023. As the Magistrate Judge explained, there is no statutory tolling during the pendency of his April 2021 and June 2021 Petitions for Post-Conviction Relief because these untimely dismissals are not considered properly filed applications for state post-conviction review. The Court agrees with the Magistrate Judge that Petitioner has not shown diligence in pursuing his federal claims and is not entitled to equitable tolling.

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